

APPENDIX

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TAB A

Decision of the United States Court of Appeals

**UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT**

No: 19-2537

United States of America

Plaintiff - Appellee

v.

Shawn Kelly Thomason

Defendant - Appellant

No: 19-3702

United States of America

Plaintiff - Appellee

v.

Shawn Kelly Thomason

Defendant - Appellant

No: 20-1230

United States of America

Plaintiff - Appellee

v.

Shawn Kelly Thomason

Defendant - Appellant

Appeal from U.S. District Court for the District of Minnesota

(0:19-cr-00005-ECT-1)

(0:19-cr-00005-ECT-1)

(0:19-cr-00005-ECT-1)

JUDGMENT

Before COLLOTON, SHEPHERD and GRASZ, Circuit Judges.

These appeals from the United States District Court were submitted on the record of the district court, briefs of the parties and were argued by counsel.

After consideration, it is hereby ordered and adjudged that the judgment of the district court in these causes are affirmed in accordance with the opinion of this Court.

March 16, 2021

Order Entered in Accordance with Opinion:
Clerk, U.S. Court of Appeals, Eighth Circuit.

/s/ Michael E. Gans

United States Court of Appeals
For the Eighth Circuit

No. 19-2537

United States of America,

Plaintiff - Appellee,

v.

Shawn Kelly Thomason,

Defendant - Appellant.

No. 19-3702

United States of America,

Plaintiff - Appellee,

v.

Shawn Kelly Thomason,

Defendant - Appellant.

No. 20-1230

United States of America,

Plaintiff - Appellee,

v.

Shawn Kelly Thomason,

Defendant - Appellant.

Appeals from United States District Court
for the District of Minnesota

Submitted: October 28, 2020

Filed: August 5, 2021

Before COLLOTON, SHEPHERD, and GRASZ, Circuit Judges.

COLLOTON, Circuit Judge.

Shawn Kelly Thomason pleaded guilty to one count of interstate stalking under 18 U.S.C. § 2261A(1). The district court¹ sentenced him to 45 months' imprisonment, followed by a three-year term of supervised release, and ordered him to pay restitution to the victim. Thomason raises six arguments on appeal. None of them warrants reversal.

The offense arose from a relationship between Thomason and a victim who is identified by her initials as JNS. They began a relationship in Michigan during the fall of 2016. JNS ended the relationship in May 2018 and later moved to Minnesota.

¹The Honorable Eric C. Tostrud, United States District Judge for the District of Minnesota.

The two initially remained in contact, but JNS later blocked Thomason's phone number, diverted his e-mails, and told Thomason in October 2018 that she was not interested in resuming their relationship. In October or November, Thomason traveled from his home in Michigan to Minnesota and placed a tracking device on JNS's car. Thomason returned at least once to replace the device.

On December 6, 2018, Thomason approached JNS while she sat in her car outside her home. Thomason was arrested the next day for stalking. Officers searched Thomason's rental car and discovered, among other items, a handgun, a taser, electrical tape, women's clothing, and writings that included notes to JNS. Federal officers later executed a search warrant at Thomason's home, where they discovered lists and materials to prepare for his confrontation with JNS.

A grand jury charged Thomason with interstate stalking, and he pleaded guilty pursuant to a plea agreement. The court imposed a term of 45 months' imprisonment and ordered Thomason to pay \$8,606.44 in restitution to JNS. Thomason appeals the conviction, sentence, and restitution order.

First, Thomason argues that the district court violated his right to freedom of speech under the First Amendment by considering the writings found in his car. Because Thomason raises this claim for the first time on appeal, we review for plain error. *See* Fed. R. Crim. P. 52(b). To obtain relief, Thomason must show an obvious error that affected his substantial rights and seriously affected the fairness, integrity, or public reputation of judicial proceedings. *United States v. Olano*, 507 U.S. 725, 732-33 (1993).

In explaining its decision to depart upward from the advisory guideline range, the district court explained that it was "concerned" by Thomason's writings and characterized some of the material as "frightening." As an example, the court quoted a note found in Thomason's car as follows: "Frankly, I don't give [an expletive] if

this was your first relationship or your tenth. . . . People get shot over things like this. . . . When you piss someone off, by defaulting on your promises and/or commitments you should be aware of the consequences.”

Thomason argues that because the purpose of the writing was “therapeutic” or “cathartic,” the speech is protected and cannot be used as a basis for imposing a sentence. He relies on *Elonis v. United States*, 135 S. Ct. 2001 (2015), where the Court held that a defendant charged with making a threatening communication could not be convicted based solely on how a reasonable person would react to the communication. *See id.* at 2004-05, 2012. *Elonis*, however, concerned only the elements of the federal offense and did not address any First Amendment issues. *See id.* at 2012. The federal sentencing statutes, by contrast, place “[n]o limitation . . . on the information concerning the background, character, and conduct of a person convicted of an offense which a court . . . may receive and consider,” 18 U.S.C. § 3661, and “the Constitution does not erect a *per se* barrier to the admission of evidence concerning one’s beliefs . . . at sentencing simply because those beliefs . . . are protected by the First Amendment.” *Dawson v. Delaware*, 503 U.S. 159, 165 (1992).

Here, despite Thomason’s assertion that the writings had “therapeutic” value, the court found that Thomason engaged in “an armed abduction in the planning.” The court determined that Thomason’s “activities were not the produc[t] of a spontaneous or emotional reaction, but rather considerable planning and intentional execution.” R. Doc. 73, at 4. The court cited Thomason’s writings as evidence that his actions were “responses to the victim’s behavior.” In other words, the writings were evidence of Thomason’s intent to commit the charged offense and tended to show that Thomason presented a danger to the victim and to the community. The court thus properly considered the writings in evaluating the need for a sentence to reflect the seriousness of the offense, to provide just punishment, and to protect the public. *See* 18 U.S.C. § 3553(a)(2). There was no violation of the First Amendment.

Second, Thomason argues that his conviction must be vacated because the prosecution engaged in misconduct by referring to him with masculine pronouns and with “stereotypes” like “gunman” and “boyfriend.” He also contends that the prosecution ignored his diagnosis of gender dysphoria by claiming that the women’s clothing found in his car was for JNS when the record showed that Thomason sometimes wears women’s clothing.

To succeed on a claim of prosecutorial misconduct, Thomason must show that flagrant misconduct caused substantial prejudice to his rights. *United States v. Manthei*, 979 F.2d 124, 126 (8th Cir. 1992). Because Thomason did not raise the issue before the district court, we review only for plain error.

The grand jury charged Thomason in January 2019, and Thomason pleaded guilty in March 2019. Thomason first indicated a preference for the use of gender-neutral pronouns in a letter dated May 29, 2019, that defense counsel sent to the probation office and prosecutors about sentencing. Two months earlier, Thomason had signed a plea agreement that referred to him with masculine pronouns. *See* R. Doc. 43, at ¶ 2 (“[T]he defendant drove from his home in Hazel Park, Michigan”) (“The defendant agrees that he traveled from Michigan to Minnesota”), ¶ 3 (“The defendant agrees that he used interactive computer services”), ¶ 4 (“The defendant understands and agrees that he has certain rights”), ¶ 6 (“The defendant understands that if he were to violate any condition of supervised release”), ¶ 10 (“The defendant represents that he will fully and completely disclose”), ¶ 11 (“The defendant agrees that he will not contact the victim”).

In the letter to the probation office, Thomason asked that, “to the extent possible, gender neutral pronouns be used when referring to him.” The letter said: “He prefers use of the pronouns: ‘they,’ ‘them’ and ‘their.’” But the letter itself referred to Thomason as “he” and “him” in making the request, and said that “[f]or

the sake of clarity,” Thomason’s own objections to the draft report “may use the masculine pronouns.” As the filings in this case illustrate, clarity suffers and confusion may follow when legal writing refers to a single individual as “they,” especially when the materials advert to other actors who are naturally described as “they” or “them” in the traditional plural.²

Even after defense counsel’s letter to the probation office, Thomason’s sentencing memorandum used masculine pronouns in some instances. *See* R. Doc. 60, at 10 n.1 (“This is, in part, why the death of his 14-year[-]old cat was so difficult.”), 29 (“Thomason explained the reason he was leaving to go home.”), 37 n.5. The prosecution likewise used masculine pronouns in its sentencing memorandum.

At the sentencing hearing in July 2019, a prosecutor said that the government would “do [its] best to be respectful of the defendant’s wish to be referred to in gender-neutral pronouns,” but explained that it was “a new development” in the case that conflicted with “eight months of habit of using male pronouns.” The prosecutor and defense counsel then referred to Thomason with masculine pronouns during the hearing. The government asked a witness: “When the defendant was arrested on December 7th of 2018, was he driving his own car?” There was no objection. In discussing documents seized from Thomason’s car, defense counsel asked a witness to confirm that there were “[l]ots of other writings that he had with him, right?”

²*E.g.*, R. Doc. 60, Defendant’s Sentencing Memorandum, at 32 (“Shawn’s GPS told federal agents that they were at McDonald’s.”); *id.* at 37 n.5 (“REDACTED”); Appellant’s Br. 15 (“Thomason was entirely cooperative with the arresting police officers and disclosed that they were in the possession of a firearm.”); Appellee’s Br. 25-26 (“The officer kept the trackers as evidence. At some point before their arrest on December 7, Thomason took a photo of their surveillance log and disposed of the hard copy.”).

Thomason did not object to the use of masculine pronouns until the end of a restitution hearing on November 12, 2019. At that point, he objected to “all 134 instances of purposeful and deliberate misgendering of me in this case as it pertains to the restitution memorandums.”

We reject Thomason’s argument that alleged prosecutorial misconduct justifies vacating his conviction. By pleading guilty, Thomason waived all non-jurisdictional claims arising from events before the plea. *See United States v. Vong*, 171 F.3d 648, 654 (8th Cir. 1999); *United States v. Cain*, 134 F.3d 1345, 1352-53 (8th Cir. 1998). There is no basis for resentencing either. By signing a plea agreement that used masculine pronouns, acknowledging that his own sentencing letter would use masculine pronouns for the sake of clarity, and using masculine pronouns through counsel at the sentencing hearing, Thomason waived any claim of misconduct by opposing counsel. And even if we assume forfeiture rather than waiver, there is no plain error warranting relief. Thomason cites no authority for the proposition that litigants and courts must refer to defendants by their preferred pronouns, and the only cited authority is to the contrary. *See United States v. Varner*, 948 F.3d 250, 254 (5th Cir. 2020). Nor is there any showing that the use of pronouns affected the outcome of the proceeding.³

On Thomason’s contention that the government disregarded his diagnosis of gender dysphoria, there was no prosecutorial misconduct. The prosecution presented evidence that the women’s clothing discovered in Thomason’s car was sized to fit the victim, not Thomason. On that basis, the government permissibly argued that the clothing was evidence of a plan to kidnap the victim. The record is clear, moreover, that the district court sentenced Thomason based on his conduct, not due to his gender or gender identity.

³Consistent with the proceedings in the district court, and for the sake of clarity, we use masculine pronouns when referring to Thomason in this opinion.

Third, Thomason argues that the government breached the terms of his plea agreement by seeking restitution under both the Mandatory Victim Restitution Act, 18 U.S.C. § 3663A, and the Violence Against Women Act, 18 U.S.C. § 2264. There was no breach. Thomason's plea agreement stated that the Mandatory Victim Restitution Act applied, but did not provide that it was the *only* basis for restitution. The agreement did not forbid the government to seek restitution under both statutes.

Fourth, Thomason argues that the interstate stalking statute, 18 U.S.C. § 2261A(1), is an unconstitutional "overreach of the federal legislature into a realm historically and exclusively controlled by the state police powers." He does not challenge the authority of Congress to enact the provision under its power to regulate interstate commerce, but cites *Printz v. United States*, 521 U.S. 898, 923-24 (1997), for the proposition that the federal statute is "defective." *Printz* explained that the Commerce Clause "authorizes Congress to regulate interstate commerce directly; it does not authorize Congress to regulate state governments' regulation of interstate commerce." *Id.* at 924 (quoting *New York v. United States*, 505 U.S. 144, 166 (1992)). This case involves a federal prosecution under a federal criminal statute. There is no regulation of state governments that would offend the rule of *Printz*.

Fifth, Thomason argues that he was deprived of the assistance of counsel under the Sixth Amendment because his trial counsel was ineffective. Following our usual practice, we decline to address his ineffective assistance of counsel claim on direct appeal because the record is not fully developed. See *United States v. Sanchez-Gonzalez*, 643 F.3d 626, 628-29 (8th Cir. 2011).

Sixth, Thomason appeals the district judge's denial of Thomason's motion for recusal. Thomason argues that the judge showed bias by his "willingness to participate" in alleged misgendering, and by making unfavorable rulings. "[J]udicial rulings alone almost never constitute a valid basis for a bias or partiality motion," and "judicial remarks . . . that are critical or disapproving of, or even hostile to" a party

“ordinarily do not support a bias or partiality challenge.” *Liteky v. United States*, 510 U.S. 540, 555 (1994). Thomason’s motion offered nothing beyond the matters that *Liteky* deems ordinarily insufficient. The judge did not abuse his discretion by denying Thomason’s motion for recusal.

The judgment of the district court is affirmed.

**UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT**

No: 19-2537

United States of America

Appellee

v.

Shawn Kelly Thomason

Appellant

American Civil Liberties Union and American Civil Liberties Union of Minnesota

Amici Curiae

No: 19-3702

United States of America

Appellee

v.

Shawn Kelly Thomason

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No: 20-1230

United States of America

Appellee

v.

Shawn Kelly Thomason

Appellant

American Civil Liberties Union and American Civil Liberties Union of Minnesota

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Appeal from U.S. District Court for the District of Minnesota
(0:19-cr-00005-ECT-1)
(0:19-cr-00005-ECT-1)
(0:19-cr-00005-ECT-1)

MANDATE

In accordance with the opinion and judgment of 03/16/2021, and pursuant to the provisions of Federal Rule of Appellate Procedure 41(a), the formal mandate is hereby issued in the above-styled matter.

June 14, 2021

Clerk, U.S. Court of Appeals, Eighth Circuit

TAB B

Decision of the United States District Court

UNITED STATES DISTRICT COURT
District of Minnesota

UNITED STATES OF AMERICA

**SECOND AMENDED JUDGMENT
IN A CRIMINAL CASE**

v.

SHAWN KELLY THOMASON

Case Number: 0:19-CR-00005-ECT-SER(1)
USM Number: 21761-041

Lisa M Lopez
Defendant's Attorney

THE DEFENDANT:

- ☒ pleaded guilty to count one.
☐ pleaded nolo contendere to count(s) which was accepted by the court
☐ was found guilty on count(s) after a plea of not guilty

The defendant is adjudicated guilty of these offenses:

Title & Section / Nature of Offense
18:2261A(1) INTERSTATE STALKING

Offense Ended
12/07/2018

Count
One

The defendant is sentenced as provided in pages 2 through 7 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

- ☐ The defendant has been found not guilty on count(s)
☐ Count(s) ☐ is ☐ are dismissed on the motion of the United States

It is ordered that the defendant must notify the United States attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant must notify the court and United States attorney of material changes in economic circumstances.

July 10, 2019

Date of Imposition of Judgment

s/ Eric C. Tostrud
Signature of Judge

ERIC C. TOSTRUD
UNITED STATES DISTRICT JUDGE
Name and Title of Judge

December 18, 2019
Date

AO 245B (Rev. 11/16) Sheet 2 - Imprisonment

DEFENDANT: SHAWN KELLY THOMASON
CASE NUMBER: 0:19-CR-00005-ECT-SER(1)

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of:

45 months.

- ☒ The court makes the following recommendations to the Bureau of Prisons:
- That the defendant be designated to the Federal Correctional Institution in Milan, MI.

- ☒ The defendant is remanded to the custody of the United States Marshal.
☐ The defendant shall surrender to the United States Marshal for this district:

☐ at _____ on _____

☐ as notified by the United States Marshal.

- ☐ The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:

☐ before _____ on _____

☐ as notified by the United States Marshal.

☐ as notified by the Probation or Pretrial Services Office.

RETURN

I have executed this judgment as follows:

Defendant delivered on _____ to _____

at _____, with a certified copy of this judgment.

UNITED STATES MARSHAL

By
DEPUTY UNITED STATES MARSHAL

AO 245B (Rev. 11/16) Sheet 3 – Supervised Release

DEFENDANT: SHAWN KELLY THOMASON
CASE NUMBER: 0:19-CR-00005-ECT-SER(1)

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of: **three (3) years.**

MANDATORY CONDITIONS

1. You must not commit another federal, state or local crime.
2. You must not unlawfully possess a controlled substance.
3. You must refrain from any unlawful use of a controlled substance. You must submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as determined by the court.
 - ☐ The above drug testing condition is suspended, based on the court's determination that you pose a low risk of future substance abuse. *(check if applicable)*
4. ☒ You must make restitution in accordance with 18 U.S.C. §§ 3663 and 3663A or any other statute authorizing a sentence of restitution. *(check if applicable)*
5. ☒ You must cooperate in the collection of DNA as directed by the probation officer. *(check if applicable)*
6. ☐ You must comply with the requirements of the Sex Offender Registration and Notification Act (34 U.S.C. § 20901, et seq.) as directed by the probation officer, the Bureau of Prisons, or any state sex offender registration agency in which you reside, work, are a student, or were convicted of a qualifying offense. *(check if applicable)*
7. ☐ You must participate in an approved program for domestic violence. *(check if applicable)*

The defendant must comply with the standard conditions that have been adopted by this court as well as with any additional conditions on the attached page.

DEFENDANT: SHAWN KELLY THOMASON
CASE NUMBER: 0:19-CR-00005-ECT-SER(1)

STANDARD CONDITIONS OF SUPERVISION

As part of your supervised release, you must comply with the following standard conditions of supervision. These conditions are imposed because they establish the basic expectations for your behavior while on supervision and identify the minimum tools needed by probation officers to keep informed, report to the court about, and bring about improvements in your conduct and condition.

1. You must report to the probation office in the federal judicial district where you are authorized to reside within 72 hours of your release from imprisonment, unless the probation officer instructs you to report to a different probation office or within a different time frame.
2. After initially reporting to the probation office, you will receive instructions from the court or the probation officer about how and when you must report to the probation officer, and you must report to the probation officer as instructed.
3. You must not knowingly leave the federal judicial district where you are authorized to reside without first getting permission from the court or the probation officer.
4. You must answer truthfully the questions asked by your probation officer.
5. You must live at a place approved by the probation officer. If you plan to change where you live or anything about your living arrangements (such as the people you live with), you must notify the probation officer at least 10 days before the change. If notifying the probation officer in advance is not possible due to unanticipated circumstances, you must notify the probation officer within 72 hours of becoming aware of a change or expected change.
6. You must allow the probation officer to visit you at any time at your home or elsewhere, and you must permit the probation officer to take any items prohibited by the conditions of your supervision that he or she observes in plain view.
7. You must work full time (at least 30 hours per week) at a lawful type of employment, unless the probation officer excuses you from doing so. If you do not have full-time employment you must try to find full-time employment, unless the probation officer excuses you from doing so. If you plan to change where you work or anything about your work (such as your position or your job responsibilities), you must notify the probation officer at least 10 days before the change. If notifying the probation officer at least 10 days in advance is not possible due to unanticipated circumstances, you must notify the probation officer within 72 hours of becoming aware of a change or expected change.
8. You must not communicate or interact with someone you know is engaged in criminal activity. If you know someone has been convicted of a felony, you must not knowingly communicate or interact with that person without first getting the permission of the probation officer.
9. If you are arrested or questioned by a law enforcement officer, you must notify the probation officer within 72 hours.
10. You must not own, possess, or have access to a firearm, ammunition, destructive device, or dangerous weapon (i.e., anything that was designed, or was modified for, the specific purpose of causing bodily injury or death to another person such as nunchakus or tasers).
11. You must not act or make any agreement with a law enforcement agency to act as a confidential human source or informant without first getting the permission of the court.
12. If the probation officer determines that you pose a risk to another person (including an organization), the probation officer may require you to notify the person about the risk and you must comply with that instruction. The probation officer may contact the person and confirm that you have notified the person about the risk.
13. You must follow the instructions of the probation officer related to the conditions of supervision.

U.S. Probation Office Use Only

A U.S. probation officer has instructed me on the conditions specified by the court and has provided me with a written copy of this judgment containing these conditions. For further information regarding these conditions, see *Overview of Probation and Supervised Release Conditions*, available at www.uscourts.gov.

Defendant's Signature _____ Date _____

Probation Officer's Signature _____ Date _____

DEFENDANT: SHAWN KELLY THOMASON
CASE NUMBER: 0:19-CR-00005-ECT-SER(1)

SPECIAL CONDITIONS OF SUPERVISION

- a. You shall submit your person, residence, office, vehicle, or an area under your control to a search conducted by a United States Probation Officer or supervised designee, at a reasonable time and in a reasonable manner, based upon reasonable suspicion of contraband or evidence of a supervision violation. You shall warn any other residents or third parties that the premises and areas under your control may be subject to searches pursuant to this condition.
- b. Except for those electronic devices or services that are incapable, through ordinary use, of being used to harass, intimidate, or place under surveillance another person, you shall not possess or use a computer or have access to any on-line service without the prior approval of the U.S. Probation and Pretrial Services Office. Your cooperation shall include, but not be limited to, allowing installation of a computer and Internet monitoring program and/or identifying computer systems, Internet-capable devices, and similar memory and electronic devices to which the defendant has access. Monitoring may include random examinations of computer systems along with Internet, electronic, and media storage devices under the defendant's control. The computer system or devices may be removed for a more thorough examination, if necessary. You shall contribute to the cost of such monitoring services, based on your ability to pay, as deemed appropriate by the U.S. Probation and Pretrial Services Office.
- c. If the probation officer determines that you pose a risk to another person, the probation officer may require you to notify the person about the risk and you must comply with that instruction. The probation officer may contact the person and confirm that you have notified the person about the risk.
- d. You shall have no contact with the victim or members of her immediate family (including letters, communication devices, audio, or visual devices, visits, or any contact through a third party) without prior consent of the probation officer.
- e. You shall participate in a psychological/psychiatric counseling or treatment program, as approved by the probation officer. Further, you shall contribute to the costs of such treatment as determined by the Probation Office Co-Payment Program not to exceed the total cost of treatment.
- f. You shall provide the probation officer access to any requested financial information, including credit reports, credit card bills, bank statements, and telephone bills.
- g. You shall be prohibited from incurring new credit charges or opening additional lines of credit without approval of the probation officer.

AO 245B (Rev. 11/16) Sheet 5 - Criminal Monetary Penalties

DEFENDANT: SHAWN KELLY THOMASON
CASE NUMBER: 0:19-CR-00005-ECT-SER(1)

CRIMINAL MONETARY PENALTIES

The defendant must pay the total criminal monetary penalties under the schedule of payments.

	<u>Assessment</u>	<u>JVTA Assessment*</u>	<u>Fine</u>	<u>Restitution</u>
TOTALS	\$100.00		\$0.00	\$8,606.44

- ☐ The determination of restitution is deferred until . An Amended Judgment in a Criminal Case (AO245C) will be entered after such determination.
- ☐ The defendant must make restitution (including community restitution) to the following payees in the amount listed below.

If the defendant makes a partial payment, each payee shall receive an approximately proportioned payment. However, pursuant to 18 U.S.C. § 3664(i), all nonfederal victims must be paid before the United States is paid.

Name and Address of Payee	**Total Loss	Restitution Ordered	Priority or Percentage
JS (See Rest Assured for remittance information.)		\$8,606.44	
TOTALS:	\$0.00	\$8,606.44	0.00%
Payments are to be made to the Clerk, U.S. District Court, for disbursement to the victim.			

- ☐ Restitution amount ordered pursuant to plea agreement §
- ☐ The defendant must pay interest on restitution and a fine of more than \$2,500, unless the restitution or fine is paid in full before the fifteenth day after the date of the judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. § 3612(g).
- ☒ The court determined that the defendant does not have the ability to pay interest and it is ordered that:
- ☒ the interest requirement is waived for the ☐ fine ☒ restitution
☐ the interest requirement for the ☐ fine ☐ restitution is modified as follows:

* Justice for Victims of Trafficking Act of 2015, Pub. L. No. 114-22

** Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after September 13, 1994, but before April 23, 1996.

AO 245B (Rev. 11/16) Sheet 6 - Schedule of Payments

DEFENDANT: SHAWN KELLY THOMASON
CASE NUMBER: 0:19-CR-00005-ECT-SER(1)

SCHEDULE OF PAYMENTS

Having assessed the defendant's ability to pay, payment of the total criminal monetary penalties is due as follows:

- A ☒ Lump sum payments of \$ 8,606.44 due immediately, balance due
☐ not later than _____, or
☒ in accordance ☐ C, ☒ D, ☐ E, or ☒ F below; or
- B ☒ Payment to begin immediately (may be combined with ☐ C, ☐ D, or ☐ F below); or
- C ☐ Payment in equal _____ (e.g., weekly, monthly, quarterly) installments of \$ _____ over a period of _____ (e.g., months or years), to commence _____ (e.g., 30 or 60 days) after the date of this judgment; or
- D ☒ Payment in equal monthly (e.g., weekly, monthly, quarterly) installments of \$ 25.00 over a period of 3 years (e.g., months or years), to commence 30 days (e.g., 30 or 60 days) after release from imprisonment to a term of supervision; or
- E ☐ Payment during the term of supervised release will commence within _____ (e.g., 30 or 60 days) after release from imprisonment. The court will set the payment plan based on an assessment of the defendant's ability to pay at that time; or
- F ☒ Special instructions regarding the payment of criminal monetary penalties:
Over the period of incarceration, the Defendant shall make quarterly installments of a minimum of \$25.00 if working non-UNICOR or a minimum of 25% of his monthly income if working UNICOR.

It is ordered that the Defendant shall pay to the United States a special assessment of \$100.00 for Count 1, which shall be due immediately. Said special assessment shall be paid to the Clerk, U.S. District Court.

Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to the clerk of the court.

The defendant shall receive credit for all payments previously made toward any criminal monetary penalties imposed.

- ☐ Joint and Several
See above for Defendant and Co-Defendant Names and Case Numbers (including defendant number), Total Amount, Joint and Several Amount, and corresponding payee, if appropriate:
- ☐ The defendant shall pay the cost of prosecution.
- ☐ The defendant shall pay the following court cost(s):
- ☐ The defendant shall forfeit the defendant's interest in the following property to the United States:

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) fine principal, (5) fine interest, (6) community restitution, (7) JVT Assessment, (8) penalties, and (9) costs, including cost of prosecution and court costs.

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

United States of America,

File No. 19-cr-00005 (ECT/SER)

Plaintiff,

v.

ORDER

Shawn Kelly Thomason,

Defendant.

Defendant Shawn Kelly Thomason has filed a motion to alter or amend opinion and order, ECF No. 112, and a motion to request recusal, ECF No. 122. Thomason requests reconsideration of the November 27, 2019 Order awarding \$8,606.44 in restitution to the victim. ECF No. 112 at 1.

“Motions for reconsideration serve a limited function: to correct manifest errors of law or fact or to present newly discovered evidence.” *Hagerman v. Yukon Energy Corp.*, 839 F.2d 407, 414 (8th Cir. 1988) (citation omitted). “A district court has broad discretion in determining whether to grant a motion to alter or amend judgment.” *Id.* at 413. Here, Thomason has not pointed to any manifest errors of law or fact, nor has Thomason presented any newly discovered evidence. Rather, Thomason reasserts arguments made already in Thomason’s memorandum in opposition to restitution. *Compare* ECF No. 112 at 2–7, *with* ECF No. 105 at 3–17 *and* ECF No. 98. Accordingly, Thomason’s motion to alter or amend will be denied.

The operative question in assessing whether recusal is warranted is “whether the judge’s impartiality might reasonably be questioned by the average person on the street who knows all the relevant facts of a case.” *United States v. Melton*, 738 F.3d 903, 905 (8th Cir. 2013) (quoting *Moran v. Clarke*, 296 F.3d 638, 648 (8th Cir. 2002) (en banc)). Thomason advances three arguments for recusal. First, Thomason argues the sentence imposed evidences impartiality because “the imposed sentence is entirely unjust and unfair.” ECF No. 122 at 10. A defendant’s belief that a sentence is unjust will rarely be a ground for recusal. Thomason remains free, of course, to present this argument to the Court of Appeals. Second, Thomason argues that “it is reasonable to infer based on the fact that Defendant’s memorandums and oral argument were completely ignored when deciding the issue of restitution, that there was, at the very least, some” bias in favor of the victim. ECF No. 112 at 9; *see also* ECF No. 122 at 10–11. The basic premise underlying this argument is not accurate. The memoranda and arguments were not ignored. They were considered and rejected. Lastly, Thomason asserts that Thomason has “been met with perceived hostility ever since” Thomason’s motion to proceed pro se was granted. ECF No. 122 at 12. Thomason’s motion to proceed pro se was granted at the restitution hearing, and aside from these motions to reconsider and recuse, no judicial decision has been required since. *See* ECF Nos. 110–122. In other words, aside from these motions, there is no “ever since.” Thomason’s recusal request will be denied.

Based on the foregoing, and all of the files, records, and proceedings herein, **IT IS ORDERED** that Defendant Shawn Kelly Thomason's motion to alter or amend opinion and order, [ECF No. 112], and motion to request recusal, [ECF No. 122], are **DENIED**.

Dated: January 15, 2020

s/ Eric C. Tostrud

Eric C. Tostrud

United States District Court

TAB C

Order of United States Court of Appeals Denying Rehearing

**UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT**

No: 20-1230

United States of America

Appellee

v.

Shawn Kelly Thomason

Appellant

American Civil Liberties Union and American Civil Liberties Union of Minnesota

Amici Curiae

No: 19-2537

United States of America

Appellee

v.

Shawn Kelly Thomason

Appellant

American Civil Liberties Union and American Civil Liberties Union of Minnesota

Amici Curiae

No: 19-3702

United States of America

Appellee

v.

Shawn Kelly Thomason

Appellant

American Civil Liberties Union and American Civil Liberties Union of Minnesota

Amici Curiae

Appeal from U.S. District Court for the District of Minnesota
(0:19-cr-00005-ECT-1)
(0:19-cr-00005-ECT-1)
(0:19-cr-00005-ECT-1)

ORDER

The petition for rehearing en banc is denied. The petition for rehearing by the panel is also denied.

Judge Stras did not participate in the consideration or decision of this matter.

May 20, 2021

Order Entered at the Direction of the Court:
Clerk, U.S. Court of Appeals, Eighth Circuit.

/s/ Michael E. Gans

**Additional material
from this filing is
available in the
Clerk's Office.**